

Office of the Secretary, HUD

§ 81.15

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer standard of the Community Support Program; or

(B) Community development credit unions; community development financial institutions; public loan funds; or non-profit mortgage lenders. HUD may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if, so will notify the GSEs in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans, but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section; and the seller has held the loans for six months or less prior to selling the loans to the GSE, HUD will consider that the seller has met the requirements of this paragraph (e)(4) and of 12 U.S.C. 4563(b)(1)(B).

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of a GSE's existing mortgage or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two GSEs shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (g), "mortgages or mortgage-backed securities portfolios" includes mortgages retained by Fannie Mae or Freddie Mac

and mortgages utilized to back mortgage-backed securities.

[60 FR 61888, Dec. 1, 1995, as amended at 65 FR 65086, Oct. 31, 2000]

§ 81.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by a GSE's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include GSE transactions or activities that are not mortgages or mortgage purchases as defined by HUD or transactions that are specifically excluded as ineligible under § 81.16(b).

(3) *Missing data or information.* When a GSE lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by a GSE in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.* For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal,

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mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgagors may be counted under a particular family income level, *i.e.* especially low, very low, low or moderate income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under §81.17. When the income of the mortgagors is not available to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude single family owner-occupied units located in census tracts with median income less than or equal to area median income according to the most recent census from the denominator as well as the numerator, up to a ceiling of one percent of the total number of single family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases in excess of the ceiling will be included in the denominator and excluded from the numerator if they are missing data.

(e) *Counting rental units*—(1) *Use of income, rent*—(i) *Generally*. For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information*. (A) Each GSE shall require lenders to provide to the GSE tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the GSE's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not

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available for rent, the GSE shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the GSE shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices*. A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if a GSE determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants*. When the income of actual tenants is available, to determine whether a tenant is very-low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in §81.17.

(4) *Income of prospective tenants*. When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each GSE must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent*. When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very-low-, low-, or moderate-income

families as provided in § 81.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Affordability data unavailable.* (i) *Multifamily.* When information regarding the affordability of a rental unit is not available, a GSE's performance with respect to such a unit may be evaluated with estimated affordability information, so long as the Department has reviewed and approved the data source and methodology for such estimated data. The use of estimated information to determine affordability may be used up to a maximum of five percent of the total number of units backing the GSEs' multifamily mortgage purchases in the current year, adjusted for REMIC percentage and participation percent. When the application of affordability data based on an approved market rental data source and methodology is not possible, and therefore the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward the achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, HUD will exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under those goals.

(ii) *Rental units in 1-4 unit single family properties.* When neither the income of prospective or actual tenants of a rental unit in a 1-4 unit single family property nor actual or average rent data is available, and, therefore, the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude rental units in 1-4 unit single family properties from the denominator as well as the numerator in calculating performance under those goals.

(7) *Timeliness of information.* In determining performance under the housing goals, each GSE shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of Median income.* (1) For purposes of determining an area's median income under §§ 81.17 through 81.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When a GSE cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the GSE shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the GSE can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When a GSE uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the GSE need not use the new data until the start of the following quarter.

[60 FR 61888, Dec. 1, 1995, as amended at 65 FR 65087, Oct. 31, 2000]

§ 81.16 Special counting requirements.

(a) *General.* HUD shall determine whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, HUD